



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Department of Labor and Industry
Virginia Administrative Code (VAC) citation	16 VAC 25-90-1910, General Industry; 16 VAC 25-100-1915, Shipyards Employment; 16 VAC 25-120-1917, Longshoring; 16 VAC 25-130-1918, Marine Terminals; 16 VAC 25-175-1926, Construction Industry
Regulation title	16 VAC 25-90-1910.132, General requirements, §1910.132; 16 VAC 25-100-1915.152, General requirements, §1915.152; 16 VAC 25-120-1917.96, Payment for protective equipment, §1917.96; 16 VAC 25-130-1918.106, Payment for protective equipment, §1918.106; 16 VAC 25-175-1926.95, Criteria for personal protective equipment, §1926.95
Action title	Employer Payment for Personal Protective Equipment (PPE); Final Rule
Final agency action date	February 28, 2008
Document preparation date	February 28, 2008

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 21 (02) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Many federal OSHA health, safety, maritime, and construction standards require employers to provide their employees with protective equipment, including personal protective equipment (PPE), when such equipment is necessary to protect employees from job-related injuries, illnesses, and fatalities.

The provisions in federal OSHA standards that require PPE generally state that the employer is to provide such PPE. However, some of these provisions do not specify that the employer is to provide such PPE at no cost to the employee (See list of items covered in Appendix A). This standard does not require employers to pay for items that are not PPE, nor provide PPE where none has before been required. Instead, the standard merely stipulates that the employer must pay for required PPE, except in the limited cases specified in the standard. (See Appendix B for examples of items exempted from employer payment requirements)

This final rule also clarifies federal OSHA's intent regarding employee-owned PPE and replacement PPE. Employers must also pay for any replacement PPE, except in cases where the employee loses or intentionally damages his or her equipment.

The final rule also states that an employer is only required to pay for the PPE of its own employees, not independent contractors working in their [the employer's] facilities. "Host employers" and general contractors are not responsible for the payment of PPE for subcontractors employees. However, employers utilizing and controlling the work of workers from temporary help services are responsible for providing PPE at no cost to the worker, but are free to negotiate arrangements with the temporary worker agency.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On February 28, 2008, the Safety and Health Codes Board adopted federal OSHA's final rule for Employer Payment for Personal Protective Equipment (PPE), as published in 72 FR 64341 on November 15, 2007, with an effective date of June 1, 2008, and an implementation date of September 1, 2008.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

The final rule does not change any PPE requirements. It only affects the issue of who pays for PPE required by federal OSHA standards. Therefore, the final rule will have no impact on the institution of the family or family stability.

To access the final rule for Employer Payment for Personal Protective Equipment (PPE), please see attachment or go to:

www.osha.gov/FedReg_osha_pdf/FED20071115.pdf

**EMPLOYER PAYMENT FOR PERSONAL PROTECTIVE EQUIPMENT;
FINAL RULE**

As Adopted by the
Safety and Health Codes Board

Date: February 28, 2008



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: June 1, 2008

- 16 VAC 25-90-1910, General Industry
- 16 VAC 25-100-1915, Shipyards Employment
- 16 VAC 25-120-1917, Longshoring
- 16 VAC 25-130-1918, Marine Terminals
- 16 VAC 25-175-1926, Construction Industry

When the regulations, as set forth in the final rule for Employer Payment for Personal Protective Equipment (PPE), are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

Effective date: February 13, 2008

June 1, 2008

Implementation date: May 15, 2008

September 1, 2008

employee has lost or intentionally damaged the PPE.

(6) Where an employee provides appropriate protective equipment he or she owns, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (f)(2) through (f)(5) of this section.

(7) This paragraph (f) shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

Note to § 1915.152(f): When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

Longshoring

PART 1917—[AMENDED]

■ 1. The authority citation for 29 CFR part 1917 is revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160) as applicable; 29 CFR Part 1911.

■ 2. A new § 1917.96 is added, to read as follows:

§ 1917.96 Payment for protective equipment.

(a) Except as provided by paragraphs (b) through (f) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

(b) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

(c) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(d) The employer is not required to pay for:

(1) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(2) Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(e) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

(f) Where an employee provides adequate protective equipment he or she owns, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (b) through (e) of this section.

(g) This section shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

Note to § 1917.96: When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

Marine Terminals

PART 1918—[AMENDED]

■ 1. The authority citation for 29 CFR part 1918 is revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160) as applicable; 29 CFR Part 1911.

■ 2. A new § 1918.106 is added, to read as follows:

§ 1918.106 Payment for protective equipment.

(a) Except as provided by paragraphs (b) through (f) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

(b) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

(c) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal

protection, the employer is not required to reimburse the employee for the shoes or boots.

(d) The employer is not required to pay for:

(1) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(2) Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(e) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

(f) Where an employee provides adequate protective equipment he or she owns, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (b) through (e).

(g) This section shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

Note to § 1918.106: When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

Construction

PART 1926—[AMENDED]

■ 1. The authority citation for subpart E of 29 CFR part 1926 is revised to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160) as applicable; and 29 CFR Part 1911.

■ 2. A new paragraph (d) is added to § 1926.95, to read as follows:

§ 1926.95 Criteria for personal protective equipment.

* * * * *

(d) *Payment for protective equipment.*

(1) Except as provided by paragraphs (d)(2) through (d)(6) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be

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provided by the employer at no cost to employees.

(2) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

(3) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(4) The employer is not required to pay for:

(i) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(ii) Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(5) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

(6) Where an employee provides adequate protective equipment he or she owns pursuant to paragraph (b) of this section, the employer may allow the employee to use it and is not required

to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (d)(2) through (d)(5) of this section.

(7) This section shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

Note to § 1926.95(d): When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

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